



U.S. Department of Justice

Andrew E. Lelling
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

June 27, 2019

Arthur J. O'Donald, III, Esq.
1859 Northampton Street
Holyoke, MA 01040-1922

Re: United States v. Alberto Marte
Criminal No. 16-CR-30044-MGM

Dear Attorney O'Donald:

The United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Alberto Marte ("Defendant"), agree as follows with respect to the above-referenced case:

1. Change of Plea

At the earliest practicable date the Defendant shall plead guilty to the following counts in the above-referenced Superseding Indictment: —Conspiracy to Distribute and Possess with Intent to Distribute Heroin in violation of 21 U.S.C. § 846 (Count One); Distribution and Possession with Intent to Distribute Heroin in violation of 21 U.S.C. § 841 (Counts Two through Seven); Conspiracy to Distribute and Possess with Intent to Distribute Fentanyl) in violation of 21 U.S.C. § 846 (Count Eight); and, Possession of a Firearm in Furtherance of Drug Trafficking 18 U.S.C. § 924 (c) (Count Nine).

Defendant expressly and unequivocally admits that he committed the crimes charged in counts one through nine of the Superseding Indictment, did so knowingly, and is in fact guilty of those offenses.

2. Penalties

Defendant faces the following mandatory minimum and maximum penalties on count one of the Superseding Indictment: incarceration for a maximum of life and a minimum of 10 years; supervised release for at least five years; a fine of \$10 million; a mandatory special assessment of \$100; restitution; and forfeiture to the extent charged in the Indictment.

Defendant faces the following mandatory minimum and maximum penalties on counts two through seven of the Superseding Indictment: incarceration for a maximum of 40 years and a minimum of five years; supervised release for at least four years; a fine of \$5 million; a mandatory special assessment of \$100; restitution; and forfeiture to the extent charged in the Superseding Indictment.

Defendant faces the following mandatory minimum and maximum penalties on count eight of the Superseding Indictment: incarceration for a maximum of 20 years; supervised release for at least three years; a fine of \$10 million; a mandatory special assessment of \$100; restitution; and forfeiture to the extent charged in the Superseding Indictment.

Defendant faces the following mandatory minimum and maximum penalties on count nine of the Superseding Indictment: incarceration for a maximum of life and a minimum of five years to be served consecutive to count one of the Superseding Indictment; supervised release for up to four years; a fine of \$10 million; a mandatory special assessment of \$100; restitution; and forfeiture to the extent detailed in paragraph 7 of this agreement.

Defendant also recognizes that pleading guilty may have consequences with respect to Defendant's immigration status if Defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which Defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and Defendant understands that no one, including defense counsel and the District Court, can predict to a certainty the effect of this conviction on Defendant's immigration status. Defendant nevertheless affirms his decision to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is Defendant's automatic removal from the United States.

3. Fed. R. Crim. P. 11(c)(1)(C) Plea

This Plea Agreement is made pursuant to Fed. R. Crim. P. 11(c)(1)(C), and Defendant's guilty plea will be tendered pursuant to that provision. In accordance with Rule 11(c)(1)(C), if the District Court ("Court") accepts this Plea Agreement, the Court must include the agreed disposition in the judgment. If the Court rejects any aspect of this Plea Agreement, the U.S. Attorney may deem the Plea Agreement null and void. Defendant understands and acknowledges that he may not withdraw his plea of guilty unless the Court rejects this Plea Agreement under Fed. R. Crim. P. 11(c)(5).

4. Sentencing Guidelines

The parties agree jointly to take the following positions at sentencing under the United States Sentencing Guidelines (“USSG” or “Guidelines”). The parties agree that Defendant’s total adjusted offense level under the Guidelines is calculated as follows:

- a) in accordance with USSG § 2D1.1(c)(4), Defendant’s base offense level is 32, because Defendant conspired to distribute between 3 KG and 10 KG of heroin;
- b) in accordance with USSG § 3B1.1(a), Defendant’s offense level is increased by 4, because Defendant was an organizer or leader of a criminal activity that involved five or more participants;
- c) in accordance with USSG § 2D1.1(b)(12), Defendant’s offense level is increased by 2, because Defendant maintained a premises for the purpose of distributing a controlled substance; and
- d) in accordance with USSG § 3E1.1, based on Defendant’s prompt acceptance of personal responsibility for the offense(s) of conviction in this case, the adjusted offense level is reduced by two.

The U.S. Attorney’s agreement that the disposition set forth below is appropriate in this case is based, in part, on Defendant’s prompt acceptance of personal responsibility for the offenses of conviction in this case.

The U.S. Attorney may, at his sole option, be released from his commitments under this Plea Agreement, including, but not limited to, his agreement that Paragraph 5 constitutes the appropriate disposition of this case, if at any time between Defendant’s execution of this Plea Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit Defendant’s conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG § 1B1.3;
- (d) Fails to provide truthful information about Defendant’s financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG § 1B1.3;

- (f) Engages in acts that form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG § 3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Plea Agreement;
or
- (j) Attempts to withdraw Defendant's guilty plea.

Nothing in this Plea Agreement affects the U.S. Attorney's obligation to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

5. Agreed Disposition

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the U.S. Attorney and Defendant agree that the following is a reasonable and appropriate disposition of this case:

- (a) incarceration for 180 months;
- (b) a fine of \$0;
- (c) 60 months of supervised release;
- (d) a mandatory special assessment of \$900, which Defendant must pay to the Clerk of the Court on or before the date of sentencing (unless Defendant establishes to the Court's satisfaction that Defendant is unable to do so);
and
- (e) forfeiture as set forth in Paragraph 7.

6. Waiver of Right to Appeal and to Bring Future Challenge

- (a) Defendant has conferred with his attorney and understands that he has the right to challenge his conviction in the United States Court of Appeals for the First Circuit ("direct appeal"). Defendant also understands that, in some circumstances, Defendant may be able to challenge his conviction in a future proceeding (collateral or otherwise), such as pursuant to a motion under 28 U.S.C. § 2255 or 28 U.S.C. § 2241. Defendant waives any right to challenge Defendant's conviction on direct appeal or in any future proceeding (collateral or otherwise).

- (b) Defendant has conferred with his attorney and understands that defendants ordinarily have a right to challenge in a direct appeal their sentences (including any orders relating to the terms and conditions of supervised release, fines, forfeiture, and restitution) and may sometimes challenge their sentences (including any orders relating to the terms and conditions of supervised release, fines, forfeiture, and restitution) in a future proceeding (collateral or otherwise). The rights that are ordinarily available to a defendant are limited when a defendant enters into a Rule 11(c)(1)(C) agreement. In this case, Defendant waives any rights Defendant may have to challenge the agreed-upon sentence (including any agreement relating to the terms and conditions of supervised release, fines, forfeiture, and restitution) on direct appeal and in a future proceeding (collateral or otherwise), such as pursuant to 28 U.S.C. § 2255 and 28 U.S.C. § 2241. Defendant also waives any right Defendant may have under 18 U.S.C. § 3582 to ask the Court to modify the sentence, even if the USSG are later amended in a way that appears favorable to Defendant. Likewise, Defendant agrees not to seek to be resentenced with the benefit of any change to Defendant's Criminal History Category that existed at the time of Defendant's original sentencing. Defendant also agrees not to challenge the sentence in an appeal or future proceeding (collateral or otherwise) even if the Court rejects one or more positions advocated by any party at sentencing. In sum, Defendant understands and agrees that in entering into this Plea Agreement, the parties intend that Defendant will receive the benefits of the Plea Agreement and that the sentence will be final.
- (c) The U.S. Attorney agrees that he will not appeal the imposition by the Court of the sentence agreed to by the parties as set out in Paragraph 5, even if the Court rejects one or more positions advocated by either party at sentencing.
- (d) Regardless of the previous subparagraphs, Defendant reserves the right to claim that: (i) Defendant's lawyer rendered ineffective assistance of counsel under *Strickland v. Washington*; or (ii) the prosecutor in this case engaged in misconduct that entitles Defendant to relief from Defendant's conviction or sentence.

7. Forfeiture

Defendant understands that the Court will, upon acceptance of Defendant's guilty plea, enter an order of forfeiture as part of Defendant's sentence, and that the order of forfeiture may include assets directly traceable to Defendant's offense, assets used to facilitate Defendant's

offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense.

The assets to be forfeited specifically include, without limitation, the following:

- a. \$23,790 in United States currency, seized in Springfield, Massachusetts on September 22, 2016;
- b. one white 2015 Toyota Tundra, bearing vehicle identification number 5TFAY5F18FX418686, seized in Springfield, Massachusetts;
- c. one gray 2009 Nissan Rogue, bearing vehicle identification number 1N8A558V99W188561, seized in Springfield, Massachusetts;
- d. one brown 2011 GMC Acadia, bearing vehicle identification number 1GKKVPED3BJ174175, seized in Springfield, Massachusetts;
- e. one white 2014 Honda Accord EX-L, bearing vehicle identification number 1HGCR2F80EA011790;
- f. one 2003 Honda Odyssey EX-L, bearing vehicle identification number 5FNRL18963B081793;
- g. one gray 2008 Honda Accord EX-L, bearing vehicle identification number 1HGCP368X8A016026;
- h. one orange 2016 KTM 500 EXC motorcycle, bearing vehicle identification number VBKEXP4OXGM402484;
- i. one gray/black 2012 Lowe Ind FM165 fishing boat with 2013 Karavan trailer, bearing hull number LWC05362B212;
- j. one Smith & Wesson 99 .40 caliber handgun, bearing serial number SAF8126;
- k. one Smith & Wesson .38 Special Revolver, bearing serial number CXP9606; and
- l. one Mossberg 12-gauge shotgun, bearing serial number AT132340

Defendant admits that these assets are subject to forfeiture on the grounds that they constitute, or are derived from, proceeds of Defendant's offense; they were used to facilitate Defendant's offense; and/or they were involved in Defendant's offense.

Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2, and 43(a) regarding

notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands and agrees that forfeiture shall not satisfy or affect any fine, lien, penalty, restitution, cost of imprisonment, tax liability or any other debt owed to the United States. The government agrees to file a release of lis pendens on the following properties within thirty days of the entry of judgment in this matter: (a) the real property located at 75 Tyler Street, Springfield, Massachusetts, including all buildings, improvements and appurtenances thereon, more particularly described in a quitclaim deed recorded at the Hampden County Registry of Deeds, Book 19480, Page 134; and (b) the real property located at 97-99 Massachusetts Avenue, Springfield, Massachusetts, including all buildings, improvements and appurtenances thereon, more particularly described in a fiduciary deed recorded at the Hampden County Registry of Deeds, Book 20449, Page 74. Other than these properties, Defendant releases any claims Defendant may have to any vehicles, currency, or other personal property seized by the United States.

Defendant agrees to assist fully in the forfeiture of the foregoing assets. Defendant agrees to promptly take all possible steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. Defendant further agrees not to assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding.

If the U.S. Attorney requests, Defendant shall deliver to the U.S. Attorney within 30 days after signing this Plea Agreement a sworn financial statement disclosing all assets in which Defendant currently has any interest and all assets over which Defendant has exercised control, or has had any legal or beneficial interest. Defendant further agrees to be deposed with respect to Defendant's assets at the request of the U.S. Attorney. Defendant agrees that the United States Department of Probation may share any financial information about the Defendant with the United States Attorney's Office.

Defendant also agrees to waive all constitutional, legal, and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement.

Defendant hereby waives and releases any claims Defendant may have to any vehicles, currency, or other personal property seized by the United States, or seized by any state or local law

enforcement agency and turned over to the United States, during the investigation and prosecution of this case, and consents to the forfeiture of all such assets.

8. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning Defendant's assets.

9. Civil Liability

By entering into this Plea Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, Defendant may have incurred or may incur as a result of Defendant's conduct and plea of guilty to the charges specified in Paragraph 1 of this Plea Agreement.

10. Withdrawal of Plea by Defendant or Rejection of Plea by Court

Should Defendant move to withdraw his guilty plea at any time, or should the Court reject the parties' agreed-upon disposition of the case or any other aspect of this Plea Agreement, this Plea Agreement shall be null and void at the option of the U.S. Attorney. In this event, Defendant agrees to waive any defenses based upon the statute of limitations, the constitutional protection against pre-indictment delay, and the Speedy Trial Act with respect to any and all charges that could have been timely brought or pursued as of the date of this Plea Agreement.

11. Breach of Plea Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Plea Agreement, has engaged in any of the activities set forth in Paragraph 4(a)-(j), has violated any condition of Defendant's pretrial release, or has committed any crime following Defendant's execution of this Plea Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Plea Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, regardless whether he elects to be released from his commitments under this Plea Agreement. Further, the U.S. Attorney may pursue any and all charges which otherwise may have been brought against Defendant and/or have been, or are to be, dismissed pursuant to this Plea Agreement. Defendant recognizes that his/her breach of any obligation under this Plea Agreement shall not give rise to grounds for withdrawal of Defendant's guilty plea, but will give the U.S. Attorney the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements made by Defendant and any information, materials, documents or objects provided by Defendant to the government, without any limitation, regardless of any prior agreements or understandings, written or oral, to the contrary. In this regard, Defendant hereby waives any defense to any charges that Defendant might otherwise have based

upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

12. Who is Bound by Plea Agreement

This Plea Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

13. Modifications to Plea Agreement


This Plea Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Plea Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Neil L. Desroches.

Very truly yours,

ANDREW E. LELLING
United States Attorney

By:


DEEPIKA BAINS SHUKLA
Chief, Springfield Branch Office


NEIL L. DESROCHES
Assistant U.S. Attorney

ACKNOWLEDGMENT OF PLEA AGREEMENT


I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that (a) it accurately sets forth my plea agreement with the United States Attorney's Office for the District of Massachusetts; (b) there are no unwritten agreements between me and the United States Attorney's Office; and (c) no official of the United States has made any unwritten promises or representations to me, in connection with my change of plea. In addition, I have received no prior offers to resolve this case. I understand the crimes to which I have agreed to plead guilty, the mandatory minimum and maximum penalties for those offenses, and the Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Plea Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Plea Agreement is in my best interest.



Alberto Marte
Defendant

Date: 6/27/19

I certify that Defendant Name has read this Plea Agreement and that we have discussed its meaning. I believe he/she understands the Plea Agreement and is entering into the Plea Agreement freely, voluntarily and knowingly. I also certify that the U.S. Attorney has not extended any other offers to resolve this matter.



Arthur J. O'Donald, III
Attorney for Defendant

Date: 6/27/19